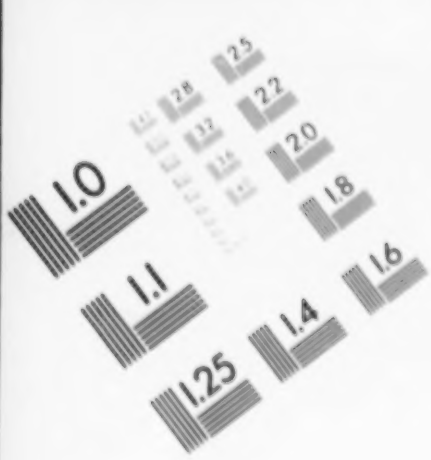

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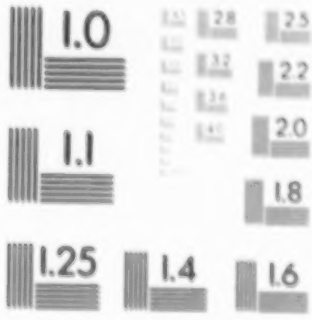

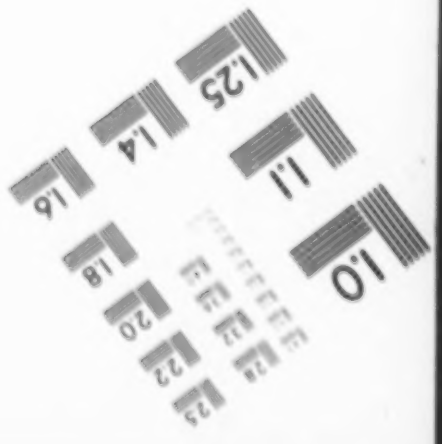

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ABSTRACT

Since its inception in 1972, Title IX has changed how the American higher education system functions at all levels. Colleges and universities continue to struggle to comply with Title IX's unspecified standards for accommodating the interests and needs of students. Due to community college administration structures and funding sources typically being tied to local taxes, minimum tuition fees, and state federal agency politics, efforts to comply with Title IX have been addressed with trepidation. Politically "hot" problems include teacher cutbacks, inadequate facilities and equipment, too many students, and lack of community and administrative support as institutions unable to comply with the unspecified Title IX standards are making decisions out of fear of lawsuits rather than out of practical concerns. This paper re-examines Title IX in an attempt to establish limits and objectives more clearly, as well as to define its purpose. By reducing ambiguities related to Title IX, higher education institutions would be released from responsibilities of its interpretation, thereby avoiding unnecessary court cases. Consequently, savings from litigation expenses could save millions of dollars that could be spent on educational programs. (AS)

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The Community College and Title IX

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Abstract

Title IX has become such a expense due to its lack of specific guidelines and interpretation. Lack of clarity has often moved its implementation into the courtrooms where cases are continually defended using educational funding. Consequently, Title IX needs to be re-examined by legislators and educators to clearly establish its limits and objectives as well as to define its purpose. By reducing ambiguities related to Title IX, higher education institutions would be released from the responsibilities of its interpretation, thereby avoiding unnecessary court cases. Consequently, savings from litigation expenses could save millions of dollars that could be spent on educational programs.

The Community College and Title IX

June 23, 1997, marked the anniversary of Title IX, the signing of one of the most important and far reaching federal legislation mandates involving higher education. Since its inception in 1972, Title IX has influenced and changed how the American higher education system functions at all levels. Today, colleges and universities continue to struggle to comply with Title IX's unspecified standards for accommodating the interests and the needs of students.

Community colleges in particular, have trouble establishing and maintaining procedures that fulfill the intents of Title IX. As each community college district has its own board of trustees, each institution must make independent decisions regarding Title IX compliance and interpretation. The lack of articulation regarding specific Title IX compliance procedures between the US Department of Education, the Office for Civil Rights, and the community college governing boards put community college districts at an extreme hardship in operation and administration.

While Title IX's goals of assuring that students'

college experience is void of discrimination while guaranteeing equality within that experience is noble and just, implementing such generic rights can often be very difficult or nearly impossible. Because community colleges are extremely diverse in origin, foundation, mission, scope, and element, applying any blanket legislative measure naturally conflicts with such diversity. Another tremendous hurdle for complying with Title IX is it is often interpreted by officials as an effort to mandate equality which is continually being addressed through civil rights amendments to the Constitution and the Supreme Court. For Title IX's mere thirty seven word document to address or provide guidance regarding these fundamental democratic questions is beyond its intended scope and purpose.

As a result of Title IX's avoidance of articulation regarding "how" to comply, colleges and universities are "empowered" to sign contracts of compliance stating their institutional present state of affairs in regard to diversity and gender parity. The contracts also ask for each institution to provide a comprehensive plan for progress for further compliance in the near future. Compliance is a hardship for many community colleges as many issues are brought forth and

resolved through the filing of court cases based on alleged violations. This "medical model" approach administers to perceived problems after the fact. Consequently, colleges must defend the bulk of such court cases that abound regarding any perceived discriminating circumstance as no specific guidelines of parameters exist as to what discrimination actually is. Determinations must, therefore, be made by the court which places worthwhile important cases at a par with obvious summary judgements. As funding limitations constrict all higher education institutions, the added burden of defending court cases brought forth due to vague legislative language is both wasteful and counterproductive as resources used to defend could often be used to comply.

This burden of determining Title IX compliance for community colleges has unique consequences that are often not shared by larger universities or four year institutions. The public community college in America today "is a coat of many colors" (Vaughan, 1985) that deals with the broad social implications of open door policy admissions, large diverse population enrollments, lifelong learning philosophies and transfer and vocational programing as well as all the

tenants of four year colleges. Typically, with limited space, resources and facilities as well serving large populations of diverse students with diverse needs, community colleges often are unable to provide additional scholarships, accommodations, buildings, equipment and supplies to establish equity. Consequently, often the only way for Title IX compliance is through reduction of services and program cut-backs.

Whether Title IX suits brought forth against community colleges for discriminating situations are justified or not, avoidance of conflict often becomes the bottom line for all administrative actions. The lack of articulation regarding specific Title IX compliance procedures between the US Department of Education, the Office for Civil Rights, and the community college governing boards put community college administrators at an impasse. Administrators, because of the increasingly complexity of government, are given the responsibility, by default, for Title IX compliance, yet empowered with only miniscrurial powers. This situation is further compounded by the fact that board members are "placed" for short periods of time resulting in lack of continuity and avoidance

of risk taking. For example, in Washington, the state Community College Act of 1967 set in place the present governing structure that includes 30 community college districts. "Each district has its own board of trustees composed of five members, each to serve four year terms" (Terrey, 1996). Each member is appointed by the governor in office with the consent of the state Senate to uphold the specific duties of the legislature. Therefore, the community college goal of providing the best broad based educational environment possible for all students is supplanted by policies and procedures that are subject to the politics of the day from hundreds of individual sources.

For these reasons, as well as countless other factors, the compliance with Title IX legislation requires interpretations that are objective and dynamic. Unfortunately, today, Title IX and related issues are largely unspecified and subjective to personal agendas, transient party politics, unspecific language, ill defined objectives and subjective interpretations.

These problems with Title IX administration are nothing new and have continually been reviewed at state and federal levels. As of 1996, in Congress, several

briefs argue that the Department of Education has misinterpreted the extent of Title IX. Among them is one from Caspar Weinberger, who served as Secretary of Health, Education and Welfare when Title IX was being developed (Haworth, 1997). Mr. Weinberger and a number of other lawmakers in the House of Representatives and Senate raise concerns about how the courts and administrative agencies interpret Title IX. "At issue is whether an interpretation of an act of Congress [Title IX] made by an administrative agency [Department of Education and the Office for Civil Rights] can be sustained as a matter of statutory construction and constitutional civil rights" (Haworth, 1997).

The essential flaw and problem that haunts Title IX legislation is in its founding ideals. Title IX was never intended to revolutionize higher education institutions. It was originally never conceived to subject entire schools to policy regulations and procedure changes. Merely one paragraph in length, Title IX clearly and concisely states, "No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance"

(Title IX, 44 Fed. Reg. at 71413). Its original purpose was to "eliminate gender discrimination in all areas of education" (Emmons & Wendt, 1996, p. 27). Unfortunately, Title IX makes no mention of how to do this or where such standards are applicable. As a result, according to Physical Education Professor, Sue Durrant,

> "It is easy to forget the breadth and depth of areas encompassed by Title IX. Besides athletics, (intramural, club, recreational, interscholastic, and intercollegiate), {which Title IX has become almost synonymous}, Title IX regulations address many other areas of activities, including admissions, student activities and organizations, counseling, academic advising, financial assistance, testing, physical and mental health services, access to classes and courses of study, all institutional rules and policies, treatment of students, publications, facilities, housing, and employment" (Durrant, 1989).

Essentially, all school functions and facilities come into play if federal funding is used to finance any part of the program or student fees. Which is one of "Title IX's touchiest issues: "whether receipt of

federal funds by one part of an educational institution subjects all the institution's activities to Title IX coverage" (Flygare, 1984).

The significant question of Title IX jurisdiction is; "to what extend" does any institutional program, which receives federal funds, have to go to comply to popular pressures regarding discrimination? The answer to this fundamental question was decided in a United States Supreme Court ruling, College v. Bell (1984), that stated "Congress never intended" an entire school would be subject to Title IX merely because one of its students received a small financial grant or because one of its departments received an earmarked federal grant (Flygare, 1984). Importantly for all higher education institutions, particularly community colleges, the Court's ruling establishes that Title IX requires only that institutions achieve equity in programs as a whole. Although equity is still an elusive goal, it is not nearly the same objective as uniform program parity.

In an effort to establish a level of equity, Office for Civil Rights guidelines have been provided to establish a standard for schools to be judged in compliance with Title IX. In response to numerous

court cases, a "three prong test" has evolved and is used by the Department of Education and the Office for Civil Rights which has overseen compliance with the law since 1979. The "three prong test" used requires institutions to insure that at least one of three standards be apparent to provide a "floor, not a ceiling" for anti-discrimination procedures. Elements required by the test for compliance are: For an institution to have approximately the same proportion of female to male participants in a program; or for the institution to provide evidence of a continuing history and planning of expanding opportunities for students who have been discriminated; or evidence of full accommodation for underprivileged students.

A problem with such a method of interpretation is that the three prongs are not legislation, therefore they can be altered or interpreted without Congressional approval. In addition, although the three elements are clear and concise, they require continual interpretation of meaning as they are largely unspecified and subjective to personal agendas, transient party politics, unspecific language, ill defined objectives and subjective interpretations. Critics continue to argue as to their individual

applications to each case, institution and situation "proportionalities" (Naughton, 1997). Consequently, as political parties and officials come and go, anti-discrimination issues remain very controversial and as Title IX changes are often political agenda "taboos," they are most often avoided.

Though tremendous advances have been made as a result of Title IX, particularly in female athletic programs, inadequate funding will continue to inhibit the process of equalization. At the community college level, equal funding for girls' programs and the availability of fields, gyms, lockers, facilities and equipment has backed many two year schools into financially restrained corners leaving few ways out. Often solutions for compliance directly conflict with institutional missions and goals. For example, consistent with their strong emphasis on the open door concept, community colleges are extremely sensitive to raising tuition, "as a way out," because as tuition goes up, enrollments typically go down (Terrey, 1996). In addition, many community colleges are urban commuter schools that are further limited by space for expansion. To expand athletic programs and build new facilities, in and out of the classroom arena, is often

not feasible. In addition, hard times in funding of programs or all types have contributed to many obvious and significant program equity problems. Many institutional objectives are left in a funding "limbo" from semester to semester or simply cut due to Title IX on one side and immediate funding concerns on the other.

Overall, due to community college administration structures and funding sources typically being tied to local taxes, minimum tuition fees, and state and federal agency politics, efforts to comply with Title IX have been addressed with trepidation. Politically "hot" problems include teacher cutbacks, inadequate facilities and equipment, too many students, lack of community and administrative support as institutions unable to comply with the unspecified Title IX standards are making decisions out of fear of lawsuits rather than out of practical concerns. If funding was not a problem from the outset, the road to equity would have been far smoother on most campuses and we might have reached our destination of complete Title IX compliance (Fox, 1989), but it will likely always be a problem until the legislation is rewritten.

While most community colleges in the future will

continue to battle problems concerning diminishing funds, external and internal pressures on their governance and administrative processes (Vaughan, 1985), fulfilling the requirements of the Title IX "three prongs" of compliance will continue to be elusive. To avoid decisions and actions taken by local and state boards of trustees framed from apprehension and conservativism, Title IX needs to be reevaluated by legislators and educators alike. As funding for community colleges will continue to depend on limited state allotments of tax dollars and tuition fees from traditionally financially strapped student bodies, institutions must streamline goals and objectives along with outlays and expenditures. Clearly, cutting programs and defending Title IX court cases are unwanted outcomes of anti-discrimination legislation that schools can ill-afford and represent responsibilities community colleges do not need.

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